IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7526 OF 2004

Mr.G.N. Salunke for the Petitioner.

Mr.M.R.Suryawanshi for Respondents Nos. 1, 2A to 2H, 3 and 4.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 4TH MAY,2005

P.C.:

1. This petition is directed against the order passed by the Appellate Court not granting stay to the execution of the decree that is challenged in the appeal. The operative part of the judgment passed by the trial court reads as under:

(1) Suit stands decreed with costs.

(2) The Defendants or their

representative in interest or their agents are hereby restrained or enjoined in perpetuity from causing obstruction to the possession of the Plaintiffs in the Suit lands unless due course of law.

Decree be drawn accordingly.

2. The Appellate court has rejected the application for stay holding that in view of clear finding recorded by the trial court that the Plaintiffs are in possession an order restraining the Defendants from disturbing the possession of the Plaintiffs cannot be stayed.

3. The learned Counsel appearing for the Petitioners submitted before me that though there is a finding recorded by the trial court that the Plaintiffs are in possession, the Plaintiffs have filed an execution application for restoration of possession to them and on the basis of decree the Plaintiffs are trying to regain the possession.

4. Therefore, I asked the learned

Counsel to point out to me such an averment made in the application for stay. He could not point out that averment in the application. Then I asked the learned Counsel to show me an averment to this effect made in the petition. But the learned Counsel was not able to point out such an averment made in the petition. But the learned Counsel continued to argue that the execution application has been filed by the Plaintiffs.

5. Surely, whether the execution application has been filed by the Plaintiffs is a question of fact, which is neither pleaded in the application for stay nor in the petition, therefore, could not have been mentioned in the argument by the learned Counsel. But the learned Counsel continued to argue the matter in the same fashion and thus wasted considerable time of the court. It is obvious that the order passed by the Appellate Court is perfectly legal and that order does not call for any interference at the hands of this court in its

jurisdiction under Article 227 of the Constitution of India.

6. In my opinion, considering the manner and the fashion in which the petition was argued, it will be duty of the court to impose exemplary cost on the Petitioners. Petition is rejected. Petitioners are directed to pay as and by way of cost of this petition an amount of Rs.15000/- (Rupees Fifteen Thousand) to the Respondents. The Appellate Court is directed that the Appellate court shall see to it that the costs that have been imposed are recovered from the Petitioners.

Petition disposed of.

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